

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

~~((+7))~~ (8) **Commercial, industrial, and institutional flows** means the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

~~((+8))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((+9))~~ (10) **Completion date or expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((+10))~~ (11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((+11))~~ (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((+12+))~~ (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((+13+))~~ (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((+14+))~~ (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((+15+))~~ (16) **Department** means the Washington state department of ecology.

~~((+16+))~~ (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((+17+))~~ (18) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((+18+))~~ (19) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

~~((+19+))~~ (20) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((+20+))~~ (21) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

~~((+21+))~~ (22) **Eligible cost** means the portion of the facilities or activities project that can be funded.

~~((+22+))~~ (23) **Energy efficiency projects** means the use of improved technologies and practices to reduce the energy consumption of water quality projects as defined by the Environmental Protection Agency (EPA) under Green Project Reserve.

(24) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((+23+))~~ (25) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((+24+))~~ (26) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((+25+))~~ (27) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ (28) **Environmentally innovative projects** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

(29) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (30) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((28))~~ (31) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((29))~~ (32) **Facilities** see water pollution control facility.

~~((30))~~ (33) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((31))~~ ~~**Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.~~

~~((32))~~ (34) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

~~((33))~~ (35) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ (36) **Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(37) **Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

~~((35))~~ (38) **Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

~~((36))~~ (39) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ (40) **Green infrastructure projects** means a wide array

of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology.

(41) **Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(42) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((+38+))~~ (43) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((+39+))~~ (44) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((+40+))~~ (45) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

~~((+41+))~~ (46) **Intended use plan** (IUP) means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

~~((+42+))~~ (47) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((+43+))~~ (48) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((+44+))~~ (49) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((+45+))~~ (50) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((+46+))~~ (51) **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((+47+))~~ (52) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((+48+))~~ (53) **Preliminary project priority list** means a catalog of all projects considered for funding based on the

governor's budget and submitted to the Washington state legislature for its consideration during budget development.

((+49+)) (54) Principal forgiveness means a loan made by the department using the water pollution control revolving fund under which some or all of the principal may be forgiven by the department, if allowable by Congress through federal appropriation.

(55) Project means a water quality improvement effort funded with a grant or loan.

((+50+)) (56) Project completion or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

((+51+)) (57) Public body means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

((+52+)) (58) Public health emergency means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

((+53+)) (59) Recipient means a public body that has an effective loan agreement with the department.

((+54+)) (60) Reserve account means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

((+55+)) (61) Revenue-secured debt means an obligation of the recipient secured by a pledge of the revenue of a utility.

((+56+)) (62) Revolving fund means the water pollution control revolving fund.

((+57+)) (63) Riparian buffer or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

((+58+)) (64) Scope of work means a detailed description of project tasks, milestones, and measurable objectives.

((+59+)) (65) Senior lien obligations means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

((+60+)) (66) Service area population means the number of people served in the area of the project.

((+61+)) (67) Severe public health hazard means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

((+62+)) (68) Sewer means the pipe and related pump stations located on public property, or on public rights of way and

easements that convey wastewater from buildings.

~~((+63+))~~ (69) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((+64+))~~ (70) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((+65+))~~ (71) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((+66+))~~ (72) **Total project cost** means the sum of all expenses associated with a water quality project.

~~((+67+))~~ (73) **Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water.

(74) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((+68+))~~ (75) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((+69+))~~ (76) **Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((+70+))~~ (77) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((+71+))~~ (78) **Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((+72+))~~ (79) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((+73+))~~ (80) **Water resource inventory area** (WRIA) means one

of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

(8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387 as defined by the EPA and allowable by Congress through federal appropriation bills.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of

pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations** (CAFO) water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction** of:

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Green project reserves** such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125 and as defined by EPA guidance, and allowed by Congress in federal appropriation bills.

(15) **Ground water protection activities** such as wellhead protection and critical aquifer recharge area protection;

~~((+15+))~~ (16) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

~~((+16+))~~ (17) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((+17+))~~ (18) **Lake implementation and associated planning activities** on lakes with public access;

~~((+18+))~~ (19) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((+19+))~~ (20) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

~~((+20+))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((+21+))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((+22+))~~ (23) **Monitoring BMP effectiveness;**

~~((+23+))~~ (24) **Monitoring equipment** used for water quality assessment;

~~((+24+))~~ (25) **Monitoring water quality;**

~~((+25+))~~ (26) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((+26+))~~ (27) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;
(~~((27))~~) (28) **Planning** comprehensive basin, watershed, and area-wide water quality development;
(~~((28))~~) (29) **Refinancing** of water pollution control facility debt;
(~~((29))~~) (30) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;
(~~((30))~~) (31) **Sales tax**;
(~~((31))~~) (32) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;
(~~((32))~~) (33) **Stream restoration projects**;
(~~((33))~~) (34) **Total maximum daily load study** development and implementation;
(~~((34))~~) (35) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;
(~~((35))~~) (36) **Transferring ownership** of a small wastewater system to a public body;
(~~((36))~~) (37) **Wastewater or storm water utility development**;
(~~((37))~~) (38) **Wastewater or storm water utility rate** or development impact fee studies;
(~~((38))~~) (39) **Water quality education** and stewardship programs.

NEW SECTION

WAC 173-98-125 Green project reserves projects. When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency is the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency projects can be stand-alone projects, and they do not need to be part of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects. Energy efficiency projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand-alone projects and they do not

need to be part of a larger capital improvement project.

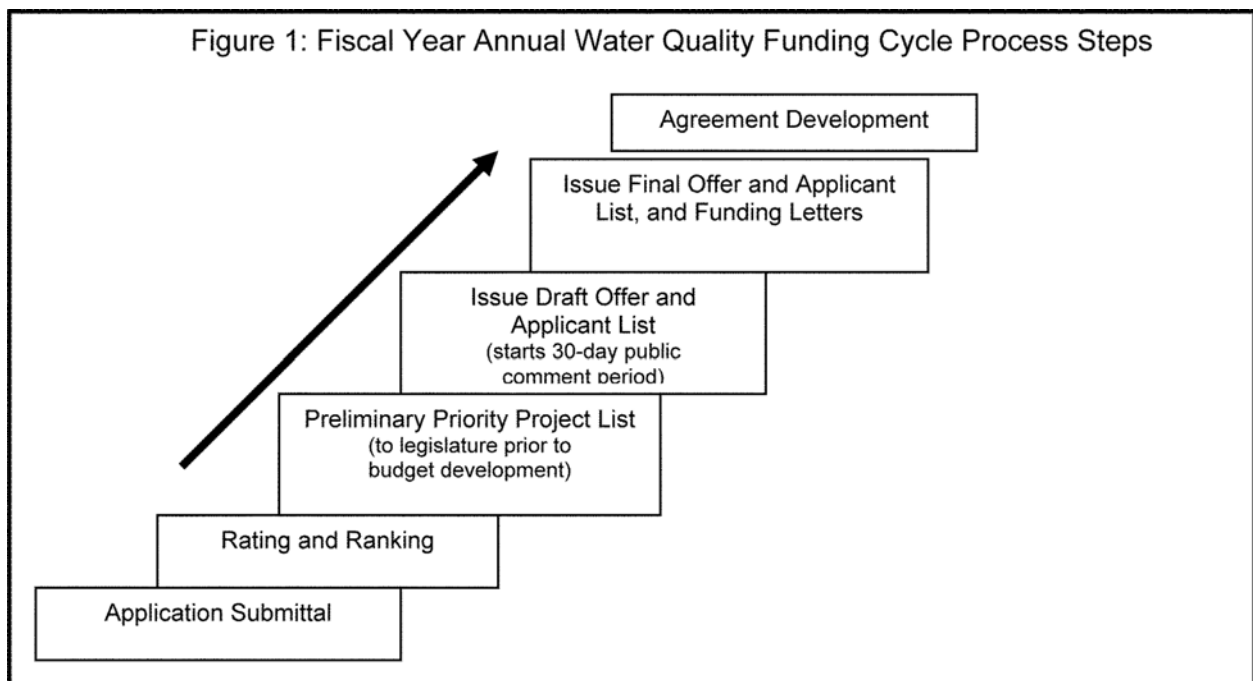
(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



(2) In general, ecology will provide the following services although annual modifications may be made to accommodate varying schedules and requirements:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of

ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) After the application deadline, complete an initial review of project proposals for funding eligibility;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

(g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;

(h) Submit preliminary project priority list to the state legislature for budget consideration;

(i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;

(j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;

(k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;

(l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;

(m) Issue funding decision letters to all applicants; and

(n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction.

(1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

(a) Service area population;

(b) Existing residential need at the time of application; and

(c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) Median household income;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal loans may be provided with revolving funds as specified in WAC 173-98-330. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

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WAC 173-98-310 On-site septic system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

((~~Figure 4.~~))

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must

provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

(a) Homeowner income:

(i) Above 80% of county MHI

(ii) 50 to 80% of county MHI

(iii) Below 50% of county MHI

(b) Small commercial enterprise annual gross revenue:

(i) Above \$100,000

(ii) \$50,000 to \$100,000

(iii) Below \$50,000

NEW SECTION

WAC 173-98-330 Forgivable principal. (1) **Forgivable principal.** The department will apply the funding hardship continuum provided in figure 7 below to determine the amount of forgiveness principal. Financial hardship will be determined based on the provisions in WAC 173-98-300.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

Figure 6.

Applicant information:
<ul style="list-style-type: none">• Service area population < 25,000• Sewer user rates are 3% to below 5% of the median household income
Applicant MAY be eligible for:

- 20-year repayment term at a 1% interest rate
- Up to 75% of the loan principal may be forgiven based on existing residential need

The interest rate in the example in figure 6 represents twenty percent of the average market rate for tax-exempt municipal bonds.

(2) **Figure 7. Forgivable principal hardship continuum** (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)
Loan Hardship-Funding Continuum	Not eligible for forgivable principal loan	50% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	75% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	100% forgivable principal loan up to ceiling amount defined in WAC 173-98-520

(3) The department will limit the amount of forgivable principal to a maximum of fifty percent of total eligible costs for a green project reserves project, not to exceed one million dollars. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding for the green project reserves category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

Figure ((6)) 8: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the

annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under section 320 of the act (National Estuary Program) and section 319 of the act, the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

(3) The capitalization grant for federal fiscal year 2010 includes conditions for funding additional subsidization and green project reserves which creates new funding set aside for these specific purposes:

(a) Additional subsidization in the form of forgivable principal: Allowable amounts are based on minimums and maximums established in the 2010 Title VI appropriation.

(b) Green project reserves: Not less than twenty percent of the capitalization grant is dedicated for green project reserves.

(4) Additional subsidization in the form of forgivable principal and reduced interest rates may be provided for eligible green project reserves projects.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-520 Ceiling amounts. (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct

projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(6) The ceiling amount for forgivable principal provided for financial hardship for WAC 173-98-330 is five million dollars.

(7) Green project reserves category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(8) The ceiling amount for forgivable principal provided for eligible green project reserves projects is fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding.